

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK A. McKENZIE,

Plaintiff,

vs.

CV F 05 0045 AWI WMW P

_____ FINDINGS AND RECOMMENDATION

B. K. RUSH, et al.,

Defendants.

Plaintiff is a state prisoner proceeding pro se. Pending before the court is Plaintiff's motion for to stay this action pending resolution of a petition for writ of habeas corpus.

The complaint in this action claims that defendants violated Plaintiff's Due Process rights at a prison disciplinary hearing. On March 20, 2006, an order was entered, dismissing the complaint with leave to file an amended complaint. Specifically, the complaint was dismissed because Plaintiff had not alleged that his disciplinary conviction had been invalidated. Because Plaintiff's claim in this case, if proven, would necessarily invalidate his conviction at the prison disciplinary hearing, such a claim may not be brought in a civil rights action until that claim as been reversed, expunged or otherwise invalidated. Edwards v. Balisok, 520 U.S. 641, 644 (1997). Plaintiff was granted an extension of time in which to file an amended complaint that includes allegations that the conviction has been invalidated.

Plaintiff has filed a petition for writ of habeas corpus challenging the validity of the

1 prison disciplinary hearing. Plaintiff requests that this action be stayed pending the resolution of
2 his habeas petition. Plaintiff is advised that because he has not alleged that his conviction has
3 been invalidated, this action should be dismissed. The court will, however, recommend that this
4 action be dismissed without prejudice to the filing of a new action once Plaintiff has had his
5 conviction invalidated.

6 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed for failure
7 to state a claim upon which relief can be granted.

8 These findings and recommendations are submitted to the United States District Judge
9 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636 (b)(1)(B). Within thirty
10 days after being served with these findings and recommendations, Plaintiff may file written
11 objections with the court. Such a document should be captioned "Objections to Magistrate
12 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections
13 within the specified time may waive the right to appeal the District Court's order. Martinez v.
14 Ylst, 951 F.2d 1153 (9th Cir. 1991).

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17 IT IS SO ORDERED.

18 **Dated: June 20, 2006**
mmkd34

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE